

From: "John Serrano" <JSerrano@saniego.gov>
Date: September 26, 2007 2:10:20 PM PDT
To: "Donna Frye" <DonnaFrye@saniego.gov>

Dear Councilmember Frye,

This office received your memorandum enclosing a notice of claim for "a large area of ocean for a floating airport" from Adam Englund, the CEO of Euphlotea, LLC, a California limited liability company. Mr. Englund lays claim to an area located 3 geographic miles from the coastline of California. The claim states that the claimant submits to the jurisdiction of the United States District Court and that all challenges to the claim shall be filed by October 16, 2007 or shall be deemed to be waived.

It is the opinion of this office that no action needs to be taken by your office for the following reasons:

1) The City of San Diego does not have jurisdiction over the ocean located 3 miles from the coastline. Article 1, Section 3 of the San Diego City Charter provides that the municipal jurisdiction of The City of San Diego shall extend to the limits and boundaries of said City and over the tidelands and waters of the Bay of San Diego, and into the Pacific Ocean to the extent of one Marine League...."

A marine league is approximately three geographic miles. 43 United States Code section 1301 (b) limits the area within local jurisdiction to 3 geographical miles from the coastline, which is coextensive with the area subject to the City's jurisdiction in the Charter. Therefore, both Federal Statutory and City Charter limits make the oceans and waters beyond three miles from the coast outside the jurisdiction of the City of San Diego. Because the claim concerns land and water that is not within the City's jurisdiction there is no action needed as to the letter;

2) The "claim" was mailed to Councilmember Frye and has not been filed with any person who has a duty to process it pursuant to the California Government Code. Section 915 of the aforementioned code provides for official notices of claims to be delivered to the clerk, secretary, auditor or governing body of the entity. No provision is made in the code for alternate delivery by regular mail to individual council members. Therefore the claim can be ignored as having no legal effect; and

3) The "claim" cannot invoke the jurisdiction of the Federal District Court without a filed complaint and a summons issued by the clerk of the court (FRCP 3 and 4). Here only a notice of claim was mailed to a Councilmember and cannot be used to create a case and controversy between the City of San Diego and the Claimant.

For each of these reasons the "claim" can be ignored by both you and your office.

John Serrano